

**From:** [LERS, EOIR \(EOIR\)](#)  
**To:** [LERS, EOIR \(EOIR\)](#); [All of Judges \(EOIR\)](#); [BIA BOARD MEMBERS \(EOIR\)](#); [BIA ATTORNEYS \(EOIR\)](#); [All of CLAD \(EOIR\)](#); [All of OCIJ JLC \(EOIR\)](#); [BIA TEAM JLC](#); [BIA TEAM P \(EOIR\)](#); [Alder Reid, Lauren \(EOIR\)](#); [Allen, Patricia M. \(EOIR\)](#); [Anderson, Jill \(EOIR\)](#); [Baptista, Christina \(EOIR\)](#); [Bauder, Melissa \(EOIR\)](#); [Berkeley, Nathan \(EOIR\)](#); [Brazill, Caitlin \(EOIR\)](#); [Burgie, Brea \(EOIR\)](#); [Burgus, Elizabeth \(EOIR\)](#); [Carr, Donna \(EOIR\)](#); [Cicchini, Daniel \(EOIR\)](#); [Cowles, Jon \(EOIR\)](#); [Curry, Michelle \(EOIR\)](#); [Evans, Brianna \(EOIR\)](#); [Grodin, Edward \(EOIR\)](#); [Hartman, Alexander \(EOIR\)](#); [Kaplan, Matthew \(EOIR\)](#); [King, Jean \(EOIR\)](#); [Korniluk, Artur \(EOIR\)](#); [Lang, Steven \(EOIR\)](#); [Lovejoy, Erin \(EOIR\)](#); [Martinez, Casey L. \(EOIR\)](#); [Noferi, Mark \(EOIR\)](#); [O'Hara, Shelley M. \(EOIR\)](#); [Park, Jeannie \(EOIR\)](#); [Powell, Karen B. \(EOIR\)](#); [Ramirez, Sergio \(EOIR\)](#); [Rimmer, Phillip \(EOIR\)](#); [Robbins, Laura \(EOIR\)](#); [Rodrigues, Paul A. \(EOIR\)](#); [Rodriguez, Bernardo \(EOIR\)](#); [Rothwarf, Marta \(EOIR\)](#); [Sanders, John W. \(EOIR\)](#); [Schaaf, Joseph R. \(EOIR\)](#); [Smith, Terry \(EOIR\)](#); [Stutman, Robin M. \(EOIR\)](#); [Swanwick, Daniel \(EOIR\)](#); [Taufa, Elizabeth \(EOIR\)](#); [Vayo, Elizabeth \(EOIR\)](#)  
**Cc:** [McHenry, James \(EOIR\)](#); [Reilly, Katherine \(EOIR\)](#); [Santoro, Christopher A \(EOIR\)](#); [Sheehey, Kate \(EOIR\)](#); [Moutinho, Deborah \(EOIR\)](#); [Adams, Amanda \(EOIR\)](#); [Pease, Jeffrey \(EOIR\)](#); [Morgan, Kenosha \(EOIR\)](#); [Macri, Andrea \(EOIR\)](#); [EOIR Library \(EOIR\)](#)  
**Subject:** Policy & Case Law Bulletin - August 3, 2018  
**Date:** Friday, August 03, 2018 5:50:36 PM

## EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Office of Policy | Legal Education and  
Research Services Division

## | Policy & Case Law Bulletin

August 3, 2018

### Federal Agencies

DOJ

- [DOJ and DOL Formalize New Partnership to Protect U.S. Workers From Discrimination and Combat Visa Abuse](#)

On July 31, 2018, the Department's Civil Rights Division and the DOL "expanded their collaboration to better protect U.S. workers from discrimination by employers that prefer to hire temporary visa workers over qualified U.S. workers. This new partnership, memorialized in a Memorandum of Understanding (MOU), establishes protocols for the agencies to share information, refer matters between them, and train each other's employees, with the goal of better protecting U.S. workers. This partnership will enhance the Civil Rights Division's efforts to stop companies from discriminating against U.S. workers and assist the DOL's Employment and Training Administration in identifying noncompliance with its foreign labor certification process."

- [Virtual Law Library Weekly Update — EOIR](#)

This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- [USCIS Announces Updated Guidance on the Implementation of NTA Policy Memorandum](#)

On July 30, 2018, USCIS announced that the implementation of [Policy Memorandum 602-0050.1](#), Updated Guidance for the Referral of Cases and Issuances of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens, which was issued on June 28, 2018, is postponed until pending operational guidance is issued.

DOS

- [DOS Updates 9 FAM](#)

DOS made updates to 9 FAM, including to sections [403.6](#) and [504.11](#), regarding non-immigrant visa clearances and immigrant visa refusals.

## Third Circuit

- [Wang v. Attorney Gen. of the United States](#)

No. 16-4316, 2018 WL 3637721 (3d Cir. Aug. 1, 2018) (Aggravated Felony)

The Third Circuit granted the PFR, holding that the Board incorrectly ruled that a conviction for Making a False Report in Connection with a Commodities Transaction under 7 U.S.C. § 6b(a)(1)(B) constitutes an aggravated felony under section 101(a)(43)(M)(i) of the Act. Specifically, the Board erred in ruling that materiality is an element of a § 6b(a)(1)(B) offense. The court also held that the Board properly found that Wang's conviction satisfied the requirement under section 101(a)(43)(M)(i) of the Act that "the loss to the victim or victims exceeds \$10,000."

## Sixth Circuit

- [Hussam F. v Sessions](#)

No. 17-3641, 2018 WL 3599146 (6th Cir. July 27, 2018) (Asylum-Discretion; Waivers-237(a)(1)(H))

The Sixth Circuit granted the PFR, holding that: (1) the Board unreasonably applied its own precedent in [Matter of Pula](#), 19 I&N Dec. 467 (BIA 1987) and [Matter of Kasinga](#), 21 I&N Dec. 357 (BIA 1996), when it concluded that the alien was ineligible for asylum as a matter of discretion because "his failure to disclose the uncertain origins of his [Syrian] passport on its own outweighed" all other relevant discretionary factors; (2) the Board engaged in *de novo* factfinding; and (3) the Board erred in concluding that the alien was statutorily ineligible for a section 237(a)(1)(H) waiver. One judge dissented from the majority's determination that the court has jurisdiction to review the discretionary element of a section 237(a)(1)(H) waiver.

## Seventh Circuit

- [Mejia Galindo v. Sessions](#)

No. 17-1253, 2018 WL 3629062 (7th Cir. July 31, 2018) (Board Jurisdiction)

The Seventh Circuit, in reviewing its own jurisdiction, vacated the Board's decision because the Board "lacked the authority to issue a removal order in the first instance." Here, the IJ ruled that Mejia Galindo was not removable and terminated proceedings. The Board reversed the IJ, ruling that Mejia Galindo was removable, and purported to enter a removal order. The court determined that the Board had no authority to do so pursuant to section 101(a)(47) of the Act.

- [Sembhi v. Sessions](#)

No. 17-2746, 2018 WL 3625804 (7th Cir. July 31, 2018) (In absentia)

The Seventh Circuit denied the PFR, holding that the Board did not err in denying the Sembhi's fifth motion to reopen and to rescind the 2001 *in absentia* removal order pursuant to section 240(b)(5)(C)(i) of the Act because he did not satisfy the requirements of [Matter of Lozada](#), 19 I&N Dec. 637 (BIA 1988), and consequently could not equitably toll the time and number limits on motions.

- [Singh v. Sessions](#)

No. 17-1579, 2018 WL 3582853 (7th Cir. July 26, 2018) (Conviction)

The Seventh Circuit denied the PFR, concluding that the Board properly denied Singh's

MTR because he did not show that his criminal conviction was vacated due to a substantive or procedural defect under [Matter of Chavez](#), 24 I&N Dec. 272 (BIA 2007). The court also held that a sentence of “one year or longer,” as used in section 237(a)(2)(A)(i)(II) of the Act, encompasses a sentence of “not more than one (1) year” under Ind. Code § 35-50-3-2.

- [Fliger v. Nielsen](#)

No. 17-2492, 2018 WL 3599376 (7th Cir. July 26, 2018) (unpublished) (Visa petitions-204(c) bar)

The Seventh Circuit affirmed the district court’s grant of summary judgment, concluding that USCIS and the Board correctly determined that the spousal visa petition (I-130) was properly denied under section 204(c) of the Act (prohibiting the approval of visa petitions in cases where an alien has previously entered into a marriage “for the purpose of evading the immigration laws”).

## Eighth Circuit

- [Chernosky v. Sessions](#)

No. 17-1400, 2018 WL 3581470 (8th Cir. July 26, 2018) (Adjustment of Status; Illegal Voting)

The Eighth Circuit denied the PFR, concluding that the Board properly determined that Chernosky was ineligible for adjustment of status because she was inadmissible under section 212(a)(10)(D)(i) of the Act for having voted unlawfully in the 2004 election.

## Ninth Circuit

- [Guo v. Sessions](#)

No. 15-70617, 2018 WL 3614045 (9th Cir. July 30, 2018) (Asylum-Persecution)

The Ninth Circuit granted the PFR in part, concluding that the evidence compels a finding of past religious persecution where, by forbidding Guo from attending his Christian “home church,” the Chinese police prevented him from practicing his faith and did so through coercive means. The court remanded the case for the Board to apply the rebuttable presumption that Guo will experience further persecution if returned to China. The court also denied the PFR, concluding that Guo’s assertion that he will be arrested upon his return to China is not sufficient to overcome the Board’s conclusion that he has not demonstrated a likelihood of being tortured in China.

- [Frimmel Mgmt., LLC v. United States](#)

No. 16-73906, 2018 WL 3579876 (9th Cir. July 26, 2018) (Evidence; Suppression)

The Ninth Circuit granted the PFR, reversing OCAHO’s ruling that ICE’s evidence (employment records obtained through an I-9 investigation) in the civil proceedings should not be suppressed pursuant to the exclusionary rule, vacated the judgment, and remanded for further proceedings. The court concluded that ICE’s evidence was not too attenuated from an illegal raid by the Maricopa County Sheriff’s Office, and therefore was not exempt from the exclusionary rule.